



Paper No. 4

FULWIDER PATTON LEE & UTECHT, LLP  
ATTORNEYS AT LAW  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE, TENTH FLOOR  
LOS ANGELES, CA 90045

**COPY MAILED**

**JUL 9 2001**

**OFFICE OF PETITIONS  
A/C PATENTS**

In re Application of	:
Ainsworth et al.	:
Application No. 09/746,746	: DECISION DISMISSING
Filed: December 22, 2000	: PETITION AS MOOT
Attorney Docket No. ACS 54804 (23571)	:
	:

This is a decision on the petition under 37 CFR 1.10(e) to accord a filing date of December 22, 2000, filed June 11, 2001.

The petition under 37 CFR 1.10(e) is dismissed as moot.

The above-identified application was filed December 22, 2000. Petitioner asserts to have neither received a return postcard nor a filing receipt. Petitioner reasons that the above-identified application is lost in the Office. This is an incorrect assumption.

#### **Petition under 37 CFR 1.10(e)**

When the Office has no record of receiving correspondence, the proper vehicle for proving receipt is either a PTO date stamped itemized postcard receipt or a grantable petition under 37 CFR 1.10(e). However, in the instant case, the Office has received the application. The December 22, 2000 filing consists of: a 2 page transmittal letter\FORM PTO-1082, a Request and Certification under 35 USC 122(b)(2)(B)(i), 19 pages of specification, 7 pages of claims, and 7 pages of drawings.<sup>1</sup> Accordingly, the petition under 37 CFR 1.10(e) is dismissed as moot.

---

<sup>1</sup> It is noted that the first page of the application (or cover sheet) states there are 8 pages of drawings associated with the filing. Both the December 22, 2000 filing and the copy of the December 22, 2000 filing supplied by petitioner on June 11, 2001 contain only 7 pages of drawings.

As authorized by petitioner, the petition fee of \$130.00 will be refunded to Deposit Account No. 06-2425.

In the instant petition, petitioner acknowledges that the December 22, 2000 filing was incomplete and states that petitioner is waiting to receive a Notice to File Missing Parts before submitting those parts. **Petitioner is informed that a Notice to File Missing Parts was mailed to the address on the application on February 26, 2001.** The two month time period for response has passed, but petitioner may still purchase extensions of time under 37 CFR 1.136 to reply in a timely manner. Because petitioner states he has not received the Notice, a copy is enclosed. If petitioner does not respond in a timely manner, the above-identified application will become abandoned.

It is noted that the address on the petition differs slightly from the address listed on the first page of the patent application. Petitioner should specify a correspondence address. As a one time courtesy, this decision will be mailed to both addresses.

The application file is being returned to the Office of Initial Patent Examination for issuance of a filing receipt that shows the application was filed on December 22, 2000.

Telephone inquiries concerning this decision should be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



E. Shirene Willis  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: copy of February 26, 2001 Notice to File Missing Parts of Nonprovisional Application

cc: FULWIDER PATTON LEE & UTECHT, LLP  
6060 CENTER DRIVE, TENTH FLOOR  
LOS ANGELES, CA 90045